



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/23/01	Bill No:	SB 835
Tax:	Sales and Use	Author:	Battin, et al.
Board Position:		Related Bills:	AB 19X (Briggs) AB 37 (Strickland) AB 1636 (Briggs)

BILL SUMMARY

This bill would exclude from the sales and use tax any federal and state excise taxes included in the selling price of gasoline and diesel fuel.

ANALYSIS

Current Law

Existing law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Existing law expressly *includes* within the definition of “gross receipts” and “sales price” the amount of any tax imposed by the United States upon producers and importers and the amount of any tax imposed by the state under the Motor Vehicle Fuel License Tax Law. The law expressly *excludes* from the definition of “gross receipts” and “sales price” the amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

Current federal law (Section 4081 of the Internal Revenue Code) imposes an excise tax on producers of \$0.184 per gallon on the removal of gasoline from a terminal or refinery, or upon importers for the entry of gasoline into the United States. This section also imposes an excise tax on undyed diesel fuel at a rate of \$0.244 per gallon.

Under the Motor Vehicle Fuel License Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301), the state imposes an excise tax, commonly referred to as the “gas tax,” of \$.018 per gallon on the distribution of gasoline in this state.

Under the Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001) the state imposes an excise tax of \$0.18 per gallon on the removal of diesel fuel at the terminal rack level.

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the 18.4 cents per gallon imposed at the federal level and the 18 cents per gallon imposed by the State.

With respect to sales of diesel fuel, the computation of sales and use tax includes only the 24.4 cents per gallon imposed at the federal level.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

Proposed Law

This bill would amend Sections 6011 and 6012 of the Revenue and Taxation Code to exclude from the measure of the sales and use tax the \$0.184 per gallon tax imposed on gasoline by the United States upon producers and importers, the \$0.18 per gallon tax imposed on gasoline by the state under the Motor Vehicle Fuel License Tax Law, and the \$0.244 per gallon federal excise tax imposed on diesel fuel.

The provisions of the bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill is enacted.

Background

Senate Bill 325 (Ch. 1400, 1971) made possible the imposition of state sales and use tax on sales of gasoline, in exchange for a reduction in the basic state tax rate, from 4 percent to 3.75 percent, without a corresponding loss in revenue. In addition to taxing gasoline, SB 325 also provided that the federal and state imposed excise taxes on gasoline are subject to the sales and use tax.

Three measures to exclude any federal and state excise taxes included in the selling price of gasoline and diesel fuel from the sales and use tax have previously been introduced. Assembly Bill 2640 (Pringle, et al.), introduced in the 1996 Legislative Session, failed passage in the Senate Revenue and Taxation Committee. Assembly Bill 1315 (Ashburn and Strickland), introduced in the 1999 Legislative Session, failed passage in the Assembly Revenue and Taxation Committee. Assembly Bill 1706 (Strickland), introduced in the 2000 Legislative Session was amended to provide an exemption for the sales price of gasoline and diesel fuel in addition to the excise tax. AB 1706 failed passage in the Assembly Appropriations Committee. The Board was *neutral* on AB 2640, *neutral*, *point out problems*, on AB 1315, and *neutral*, *point out problems*, on AB 1706.

COMMENTS

- 1. Sponsor and Purpose.** According to the office of the author, who is also the sponsor of the bill, this measure is intended to change the current law which sets up a system of double taxation by imposing the sales tax on another tax.
- 2. The Board would not, in the long run, incur any significant administrative problems with this measure.** Excluding the federal excise tax on diesel fuel and the federal and state excise taxes on gasoline from the measure of the sales tax, as proposed by this bill, would not, in the long run, cause administrative problems for the Board. However, there may be some transitional problems for gas/diesel station owners or operators to convert to the new system of taxation. This could result in some errors on returns in reporting the proper amount of tax.
- 3. Technical amendments suggested.** Since paragraph (c)(11) of Sections 6011 and 6012 already exclude the taxes imposed pursuant to the Diesel Fuel Tax Law (Part 31, commencing with Section 60001) from the computation of sales and use tax, the reference to Part 31 in proposed new paragraph (c)(12) is unnecessary and

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redundant. It is therefore suggested that, “or Part 31 (commencing with Section 60001)” be stricken from proposed paragraphs (c)(12) in both 6011 and 6012.

In addition, under subparagraph (4)(A) of subdivision (c), a cross-reference should be made to reference proposed paragraphs (c)(12) of Section 6011 and 6012 in order to incorporate the proposed exclusion. Without the cross-reference, this paragraph would appear to conflict with proposed paragraph (c)(12). It is therefore recommended that “and paragraph (12)” be added after “as provided in subparagraph (B)” in subparagraph (A) of paragraph (4) of subdivision (c) of both Sections 6011 and 6012.

- 4. Related Legislation.** Similar bills have been introduced this session that would provide an exemption for sales of gasoline and/or diesel fuel. Assembly Bill 19X (Briggs) would provide a partial tax exemption for sales of diesel fuel to be used in farming activities for a six month period. Assembly Bill 37 (Strickland) would provide a sales and use tax exemption for sales of gasoline and diesel fuel. Assembly Bill 1636 (Briggs) would provide a sales and use tax exemption for sales of diesel fuel. The Board was neutral on AB19X, neutral on AB 37, and has not yet been presented with AB 1636 for a position.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers, answering inquiries, writing appropriate regulations, and revising returns. These costs are expected to be absorbable.

REVENUE ESTIMATE

Currently both the federal and state excise taxes on gasoline are subject to the sales and use tax. The state excise tax on diesel is not subject to the sales and use tax: only the federal excise tax on diesel fuel is subject to the sales and use tax.

Consumption of gasoline in California is estimated to be 14.5 billion gallons annually. Diesel consumption is estimated to be 2.4 billion gallons annually.

The current excise tax rates and estimated annual excise tax revenues are as follows:

	<u>Gasoline</u>	<u>Diesel</u>
Federal Excise Tax Rate	\$0.184	\$0.244
Estimated Annual Gallonage	<u>14.5 billion</u>	<u>2.4 billion</u>
Estimated Annual Revenue	<u>\$2.7 billion</u>	<u>\$0.6 billion</u>
State Excise Tax Rate	<u>\$0.18</u>	
Estimated Annual Revenue	<u>\$2.6 billion</u>	
Total Excise Tax Revenue	<u>\$5.3 billion</u>	<u>\$0.6 billion</u>
Total Amount Subject to SB 835	<u>\$5.9 billion</u>	

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Revenue Summary

The revenue impact from exempting the \$5.9 billion from the sales and use tax would be as follows:

	<u>Revenue Loss</u>
State loss (5%)*	\$295 million
Local loss (2.25%)	133 million
Transit loss (0.67%)	<u>40 million</u>
 Total	 <u><u>\$468 million</u></u>

* While the state tax rate is 4.75 percent for calendar year 2001, it is assumed the tax rate will return to 5.0 percent in 2002.

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